

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
HEARTLAND CEMENT COMPANY, INC.	)	CIVIL ACTION NO. 04-1144-JTM
and RINECO, INC.	)	
	)	
Defendants.	)	
	)	

CONSENT DECREE

TABLE OF CONTENTS

I. Jurisdiction and Venue ..... Page 3

II. Applicability ..... Page 4

III. Factual Background ..... Page 4

IV. Civil Penalty ..... Page 7

V. Stipulated Penalties ..... Page 8

VI. General Provisions ..... Page 9

VII. Certification of Signatures ..... Page 13

VIII. Termination ..... Page 13

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (herein, EPA), has, simultaneously with the lodging of this Consent Decree, filed a Complaint (Complaint) alleging that Defendants, Heartland Cement Company, Inc. (Heartland) and Rineco, Inc. (Rineco) (collectively Settling Defendants), have violated certain statutory and regulatory requirements of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., at the facility in Independence, Kansas;

WHEREAS, the Complaint filed by the United States on behalf of EPA (Plaintiff) alleges that Heartland and Rineco failed to comply with certain permit conditions by improperly implementing the waste analysis plan for the facility in violation of 40 C.F.R. §§ 264.13(a), 264.13(b), § 266.102(b) and Section 3005 of RCRA;

WHEREAS, Heartland and Rineco do not admit the violations alleged in the Complaint or that they violated RCRA or any other federal or state statute or regulation;

WHEREAS, Plaintiff and Defendants have agreed that settlement of this action is in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, Plaintiff and Defendants consent to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED AND DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. The Complaint states a claim upon which relief can be granted against Heartland and Rineco under Section 3005 of RCRA, 42 U.S.C. §§ 6925; Kan. Stat. Ann. § 65-3441(a)(3); and 28 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties

consenting hereto pursuant to 28 U.S.C. §§ 1331 and 1345, and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Venue is proper under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and under 28 U.S.C. § 1391(b) and (c), because the facility owned and operated by Heartland and operated by Rineco was and is located within this District.

## **II. APPLICABILITY**

2. The provisions of this Consent Decree shall apply to and be binding upon the Plaintiff, and upon Defendants and Defendants' officers, employees, agents, successors and assigns for the life of the Consent Decree.

## **III. FACTUAL BACKGROUND**

3. Heartland Cement Company (Heartland) is a corporation organized and incorporated under Delaware law. Heartland is registered and doing business in the State of Kansas. Heartland owns a cement manufacturing facility in Independence, Kansas and is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

4. Heartland is also the "owner" and "operator" of a cement manufacturing facility (Cement Plant), as the terms "owner" and "operator" are defined at 40 C.F.R. § 260.10, which is incorporated by reference at Kan. Admin. Regs. 28-31-2(a).

5. In 1989, Heartland began to power its four cement kilns in part by burning liquid fuels containing hazardous wastes. Later, Heartland also began to burn solid fuels containing hazardous wastes. Heartland does not currently burn fuels containing hazardous waste.

6. Heartland's former burning of hazardous waste-based fuels was subject to the boiler and industrial furnace (BIF) regulations found at 40 C.F.R. Part 266, Subpart H.

7. In 1989, Heartland applied for a permit to store hazardous waste-derived fuels. In August 1991, Heartland attained interim status for the BIF units by certifying precompliance

with the specifications of 40 C.F.R. § 266.103(b) regarding the operating conditions for boilers and industrial furnaces that burn hazardous waste. In October 1992, Heartland submitted its Certification of Compliance pursuant to the requirements of 40 C.F.R. § 266.103(c). In December 20, 1996, Heartland submitted a second Certification of Compliance pursuant to the requirements of 40 C.F.R. § 266.103(c).

8. Heartland was the owner of a hazardous waste management facility (the Hazardous Waste Management Facility) located at the Cement Plant. The Hazardous Waste Management Facility was set up to receive hazardous waste fuels.

9. The Kansas Department of Health and Environment (KDHE) issued Heartland a permit (the Permit) to operate the Hazardous Waste Management Facility on September 11, 1989.

10. In 1995, Heartland hired Rineco to purchase, store, test, and blend hazardous waste fuels at the Hazardous Waste Management Facility and to carry out these responsibilities in compliance with RCRA. Rineco is a corporation organized and incorporated under Arkansas law. During all times relevant to the present case, Rineco was registered and doing business in the State of Kansas. Rineco is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11. By letter dated December 16, 1997, KDHE agreed to revise Heartland’s permit. The letter stated that KDHE was “approving [Heartland’s] request for delegating the operational control of the waste fuel facility to Rineco,” subject to certain permit modifications and other conditions. The modified permit listing Rineco as the operator of the facility was issued April 3, 1998. The permit continued to list Heartland as the owner.

12. The Hazardous Waste Management Facility ceased operations in December, 1998. Closure of the Hazardous Waste Management Facility was approved by the KDHE on August 8, 2002.

13. At a minimum, Heartland was an “operator” of the hazardous waste storage and testing facilities at the Cement Plant until December 1997, as the term “operator” is defined at 40 C.F.R. § 260.10, which is incorporated by reference at Kan. Admin. Regs. 28-31-2(a).

14. At a minimum, Rineco was also an “operator” of the hazardous waste storage and testing facilities at the Cement Plant beginning in December 1997, as the term “operator” is defined at 40 C.F.R. § 260.10.(a), which is incorporated by reference at Kan. Admin. Regs. 28-31-2(a).

15. Plaintiff alleges that Heartland and Rineco violated RCRA by failing to comply with permit requirements pursuant to a permit issued by the State of Kansas through the KDHE, and pursuant to an application filed with EPA seeking a permit to burn hazardous waste in a boiler or industrial furnace (BIF). Specifically, Plaintiff alleges that Settling Defendants violated Section 3005 of RCRA, 42 U.S.C. § 6925, K.S.A. § 65-3441, and portions of 40 C.F.R. Parts 264, 265, 266, as incorporated by reference in the Kansas Administrative Code, as set forth below:

a. In the Complaint filed Plaintiff alleges that Heartland and Rineco failed to comply with Section II.C. of the Permit. Generally, Plaintiff alleges:

i. Heartland and Rineco failed to ensure proper maintenance of laboratory instruments, use of approved sampling and analytical methods, verification of the validity of sampling and analytical procedures, and performance of correct calculations in accordance with the Waste Analysis Plan for the facility, including the Quality Assurance Plan, which Heartland and Rineco were required to maintain at the laboratory.

b. In addition, Plaintiff alleges that Heartland and Rineco failed to comply with applicable regulatory requirements, which were also incorporated into the facility's permit, as follows:

i. Heartland and Rineco failed to keep hazardous waste containers closed as required by K.A.R. 28-31-4(j), incorporating 40 C.F.R. § 264.173(a);

ii. Heartland and Rineco failed to properly maintain secondary containment structures, as required by 40 C.F.R. § 264.193(e)(1)(iii), incorporated by reference at K.A.R. 28-31-4(g); and

iii. Heartland and Rineco failed to place tags on or otherwise mark certain equipment at the facility as required by 40 C.F.R. § 265.1050(c).

#### **IV. CIVIL PENALTY**

16. Within thirty (30) calendar days of entry of this Consent Decree, Settling Defendants shall pay to the Plaintiff a civil penalty pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), in the amount of \$111,668.00.

17. The cash penalty shall be paid to the United States by Electronic Funds Transfer (EFT) to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2004V00479 and DOJ Case Number \_\_\_\_\_, and the civil action case name and case number assigned in the United States District Court for the District of Kansas. The costs of such EFT shall be Settling Defendants' responsibility. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Kansas. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Settling Defendants shall provide notice of

payment, referencing USAO File Number 2004V00479 and DOJ Case Number \_\_\_\_\_, and the civil action case name and case number, to Plaintiff, as provided in Paragraph 32.

18. Settling Defendants shall pay statutory interest on any overdue civil penalty or stipulated penalty amount at the rate specified in 31 U.S.C. § 3717. Upon entry, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, and the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308. The Plaintiff shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

19. No amount of the civil penalty to be paid by Settling Defendants shall be used to reduce their federal tax obligations.

#### **V. STIPULATED PENALTIES**

20. Settling Defendants shall pay stipulated penalties to the United States for failure to comply with the terms of this Consent Decree, provided, however, that the United States may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Consent Decree. The stipulated penalties shall be determined as follows:

21. Requirement to Pay a Civil Penalty. For failure to timely pay the civil penalty as specified in Section IV of this Consent Decree, Settling Defendants shall pay an additional \$2,000.00 per day that full payment is delayed plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717. Penalties shall begin to accrue on the day after payment is due, and shall continue to accrue through the date of completion of performance. Penalties shall accrue regardless of whether the United States has notified Settling Defendants or made a stipulated penalty demand.



22. All penalties owed under this Section shall be due and payable within thirty (30) days of Settling Defendants' receipt from the Plaintiff of a written demand for payment of the penalties. The amount of any stipulated penalties shall be paid according to the procedures set out in Paragraph 17 above. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first (31<sup>st</sup>) day after Settling Defendants' receipt of the demand letter. Interest shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717.

23. The Plaintiff reserves the right to pursue any other remedies to which they may be entitled for violations of the terms of this Consent Decree. Nothing in this Consent Decree shall prevent the Plaintiff from pursuing a contempt action against Settling Defendants for failure to comply with the terms of this Consent Decree and requesting that the Court order specific performance of the terms of the Decree.

## **VI. GENERAL PROVISIONS**

24. Effect of Settlement. This Consent Decree is not a permit; compliance with its terms does not guarantee compliance with any applicable federal, state or local laws or regulations.

25. Resolution of Claims. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of all past civil liability of Settling Defendants to the Plaintiff for the violations alleged in the Complaint.

26. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Settling Defendants of their obligation to comply with all applicable federal, state and local laws and regulations, and nothing in this Consent Decree shall be construed to prevent or limit the Plaintiff's rights to obtain penalties or injunctive relief under

applicable federal statutes or regulations, or pursuant to a state hazardous waste program authorized under Section 3006 of RCRA, 42 U.S.C. § 6906.

27. No Admission of Liability. By agreeing to the terms and entry of this Consent Decree, the Settling Defendants do not admit to the truth of the allegations in the Complaint that Settling Defendants violated certain provisions of RCRA or that they violated any provisions of RCRA or any other federal or state statute or regulation. The entry of this Consent Decree shall not constitute a finding or judgment that the Settling Defendants violated RCRA or any other federal or state statute or regulation.

28. Third Parties. Except as otherwise provided by law, this Consent Decree does not limit, enlarge or affect the rights of any party to this Consent Decree as against any third parties. Nothing in this Consent Decree should be construed to create any rights, or grant any cause of action, to any person not a party to this Consent Decree.

29. Costs. Each party to this Consent Decree shall bear its own costs and attorneys' fees herein.

30. Public Documents. All information and documents submitted by Settling Defendants to the Plaintiffs pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported confidential business information by the Settling Defendants in accordance with 40 C.F.R. Part 2.

31. Public Comments/Final Approval. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw or withhold consent if the comments regarding this Consent

Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to the entry of this Consent Decree.

32. Notice. Unless otherwise provided herein, notifications to or communications with the Plaintiff or Settling Defendants shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, written notices or other communication with the Plaintiff shall be sent to:

Edwin G. Buckner, P.E.  
Environmental Engineer  
U.S. EPA Region 7, ARTD/RESP  
901 N. 5<sup>th</sup> St.  
Kansas City, KS 66101  
Phone: (913) 551-7621  
Fax: (913) 551-9621

with a courtesy copy to:

Belinda L. Holmes  
Senior Assistant Regional Counsel  
U.S. EPA Region 7, CNSL/REGE  
901 N. 5<sup>th</sup> St.  
Kansas City, KS 66109

Notices to Settling Defendants shall be sent to:

For Heartland Cement Company, Inc.:  
Martin McClelland  
Plant Manager  
Heartland Cement Company, Inc.  
P.O. Box 428  
Independence, KS 67301

with a courtesy copy to:

Brad Hiles, Esq.  
Blackwell Sanders Peper Martin, LLP

720 Olive Street, Suite 2400  
St. Louis, MO 63101

For Rineco, Inc:

Larry Williams  
Rineco, Inc.  
1007 Vulcan Road Haskell  
Benton, AR 72015

with a courtesy copy to:

Mary Ellen Ternes, Esq.  
McAfee & Taft  
Two Leadership Square, 10<sup>th</sup> Floor  
211 North Robinson  
Oklahoma City, OK 73102

33. Change of Notice Recipient. Any party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

34. Modification. There shall be no modification of this Consent Decree without written agreement of the United States and Settling Defendants. There shall be no material modification of this Consent Decree without the written agreement of the Plaintiff and Settling Defendants and by Order of the Court.

35. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

**VII. CERTIFICATION OF SIGNATURES**

36. Each undersigned representative of a Settling Defendant and the Chief or Deputy Chief of the Environmental Enforcement Section certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute this agreement and legally bind the party he or she represents to this document.

#### **VIII. TERMINATION**

37. Payment of the penalty specified in paragraph 16 by the means specified in paragraph 17 shall fulfill all of the requirements of this Consent Decree. Once such payment is confirmed by a representative of Plaintiffs, counsel for Heartland may file a Motion with the Court similar in content to the Motion attached hereto as Exhibit 1 requesting that the Court terminate this Consent Decree and the Court will terminate the Consent Decree forthwith.

So entered in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
United States District Court Judge  
District of Kansas

FOR PLAINTIFF, UNITED STATES OF AMERICA:

s/Catherine R. McCabe  
CATHERINE R. McCABE  
Deputy Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Date: 5/3/04

s/Belinda L. Holmes  
BELINDA L. HOLMES  
Special Counsel  
Environment and Natural Resources Division  
U.S. Department of Justice  
1425 New York Avenue, N.W.  
Washington, DC 20005  
United States Attorney  
District of Kansas

Date: 4/30/04

s/Emily B. Metzger

Date: 5/7/04

EMILY B. METZGER  
Assistant United States Attorney  
District of Kansas  
Suite 1200  
301 N. Main St.  
Wichita, Kansas 67202  
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[Emily.Metzger@usdoj.gov](mailto:Emily.Metzger@usdoj.gov)  
Kansas Supreme Court No. 10750

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VII:

**s/Mark J. Hague for** \_\_\_\_\_

Date: 4/30/04

James B. Gulliford  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101



FOR DEFENDANT HEARTLAND CEMENT COMPANY, INC.:

**s/Neely L. Fedde**

Date: 4/29/04

Neely L. Fedde (Ks. Bar # 21084)  
Blackwell Sanders Peper Martin LLP  
Two Pershing Square  
2300 Main Street  
Suite 1000  
Kansas City, MO 64108  
(816) 983-8352  
Fax: (813) 983-8080  
nfedde@blackwellsanders.com

FOR DEFENDANT RINECO, INC.:

s/ Mary Ellen Ternes  
Mary Ellen Ternes, Esq.  
McAfee & Taft, P.C.  
Counsel for Rineco, Inc.  
Two Leadership Square, 10<sup>th</sup> Floor  
211 North Robinson  
Oklahoma City, OK 7310

Date: 4/30/04

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 04-1144-JTM
	)	
HEARTLAND CEMENT COMPANY, INC.	)	
and RINECO, INC.	)	
	)	
Defendants.	)	

**MOTION TO TERMINATE THE CONSENT DECREE**

COMES NOW Defendant Heartland Cement Company, Inc. ("Heartland"), through the undersigned, and moves the Court to terminate the Consent Decree filed on \_\_\_\_\_, 2004. In support of its Motion, Heartland advises the Court that Defendants have satisfied all of their obligations under the Consent Decree. Counsel for Plaintiff and for Defendant Rineco, Inc. have been notified of this Motion and consent to its filing and the relief sought herein. According to Section VII of the Consent Decree, the Consent Decree, and this Civil Action, should now be terminated. A proposed Order is attached for the Court's consideration and convenience.

RESPECTFULLY SUBMITTED  
by Defendant, Heartland Cement Company, Inc.

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NEELY L. FEDDE (Ks. Bar # 21084)  
Blackwell Sanders Peper Martin LLP  
Two Pershing Square  
2300 Main Street, Suite 1000  
Kansas City, MO 64108  
(816) 983-8352  
Fax: (816) 983-8080  
[Nfedde@blackwellsanders.com](mailto:Nfedde@blackwellsanders.com)  
Attorneys for Defendant

**EXHIBIT 1**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Motion to Terminate the Consent Decree was served this \_\_\_ day of \_\_\_\_\_, 2004, by first class U.S. Mail, postage prepaid, and by e-mail, upon the following:

Belinda L. Holmes  
Special Counsel  
Environmental and Natural Resources Division  
U.S. Department of Justice  
1425 New York Avenue, N.W.  
Washington, DC 20005

Catherine R. McCabe  
Deputy Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D. C. 20044

Mary Ellen Ternes  
McAfee & Taft, P.C.  
Two Leadership Sq. - 10th Floor  
211 N. Robinson  
Oklahoma City OK 73102-7103

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

HEARTLAND CEMENT COMPANY, )

INC. and RINECO, INC. )

Defendants. )

CIVIL ACTION NO.

**ORDER**

Upon Motion of Defendant Heartland Cement Company, Inc., this Court finds that Defendant Heartland Cement Company, Inc. and Defendant Rineco, Inc., have satisfied their obligations under the Consent Decree filed on \_\_\_\_\_, 2004, and that said Consent Decree is, and shall be, terminated.

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UNITED STATES DISTRICT JUDGE

**EXHIBIT 2**